

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF PUBLIC SAFETY

In the Matter of a Civil Penalty Imposed on Crowdaddy's, Inc., d/b/a River Front Bar and Grill	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
--	---

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy (ALJ) on October 7, 2010, at the Office of Administrative Hearings, St. Paul, Minnesota. The OAH hearing record closed at the conclusion of the hearing that day.

Natasha Karn, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101, appeared on behalf of the Department of Public Safety (DPS or Department).

Crowdaddy's, Inc., d/b/a River Front Bar and Grill (Respondent), did not appear at the hearing through any representative or through counsel.

STATEMENT OF THE ISSUE

Did the Respondent purchase alcohol from another retailer for the purpose of resale, in violation of Minn. Stat. § 340A.415 and Minn. R. 7515.0520?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On July 20, 2010, the Notice and Order for Hearing was served on the Respondent by U.S. first-class mail sent to the Respondent's business address.¹ The mailing was not returned by the Postal Service.

2. The Notice and Order for Hearing mailed to the Respondent included the following notice on page 3:

The Respondent's failure to appear at the prehearing conference or the hearing may result in a finding that the Respondent is in default,

¹ Affidavit of Service by U.S. Mail (Jul. 20, 2010).

that the Board's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

3. The Respondent did not file a Notice of Appearance with the Administrative Law Judge or make any request for a continuance or any other relief. The Respondent did not appear at the hearing on October 7, 2010, or have an appearance made on its behalf.

4. The Notice and Order for hearing alleges that on February 19, 2010, investigators associated with the Department's Alcohol & Gambling Enforcement Division visited the establishment and obtained evidence that Respondent had purchased alcoholic beverages from another retailer for resale; that the Respondent was advised of the violation and the imposition of a civil fine in the amount of \$200; and that the Respondent requested an appeal of the fine.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Department of Public Safety have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 14.57, and 340A.415.

2. The Respondent was given timely and proper notice of the hearing in this matter.

3. The Department of Public Safety has complied with all relevant substantive and procedural requirements of law and rule.

4. Because the Respondent failed to appear at the hearing, it is in default. Pursuant to Minn. R. 1400.6000, the Administrative Law Judge must deem the allegations contained in the Notice and Order for Hearing to be true.

5. Minn. Stat. § 340A.415 provides, in pertinent part:

On a finding that the license or permit holder has ... (2) purchased alcoholic beverages from another retail licensee for the purpose of resale . . . , the commissioner or the authority issuing a retail license or permit under this chapter may revoke the license or permit, suspend the license or permit for up to 60 days, impose a civil penalty of up to \$2,000 for each violation, or impose any combination of these sanctions. No suspension or revocation takes effect until the license or permit holder has been given an opportunity for a hearing under sections 14.57 to 14.69 of the Administrative Procedure Act. . . .

6. Minn. R. 7515.0520 provides that all retailers shall purchase their stock of alcoholic beverages only from duly licensed Minnesota manufacturers, brewers, and wholesalers. Retailers may purchase intoxicating liquors from other retailers only under the conditions stated in part 7515.0650 [transfer of a license or business].

7. Based on the conduct alleged in the Notice and Order for Hearing, the Respondent purchased alcohol from another retailer vendor for the purpose of resale, in violation of Minn. Stat. § 340A.415 and Minn. R. 7515.0520.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Public Safety affirm the civil penalty of \$200 imposed for Respondent's violation of Minn. Stat. § 340A.415 and Minn. R. 7515.0520.

Dated: October 8, 2010

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Public Safety (the Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this report to file Exceptions to the report. At the end of the exceptions period, the record will close. The Commissioner then has 10 working days to issue his final decision. Parties should contact Michael Campion, Commissioner of Public Safety, 444 Cedar Street, Saint Paul, Minnesota 55101, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minnesota Statutes § 14.62 (2a). The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minnesota Statutes § 14.62 (1), the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

